IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9121 of 1993

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

THAKOR JENAJI LAKHMANJI

Versus

STATE OF GUJARAT

Appearance:

MR PJ VYAS for Petitioner No. 1

MR HD DAVE, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 24/01/2003

ORAL JUDGEMENT

1. By filing instant petition under Article 227 of the Constitution of India, the petitioner has prayed to issue a writ of certiorari or any other appropriate writ, order or direction to quash the order dated April 20, 1993, passed by the State of Gujarat in Revision Application which was filed by the petitioner, by which, order dated May 13, 1976, passed by the Assistant Collector, Palanpur, directing summary eviction of the

petitioner from land bearing survey no.110/1 situated at village Vasani, Taluka Palanpur for breach of provisions of section 31 of the Bombay Prevention of Fragmentation Act, 1947, is upheld.

2. One Kaluji Bechharji was owner of land bearing survey no.110/1, situated at village Vasani, taluka Palanpur. The land admeasured one acre and two gunthas. The petitioner and one Ajmalji Dhudaji were cultivating the said land as mortgagees in possession. Subsequently the petitioner purchased the said land for a sum of Rs.600/- by registered sale deed dated August 11, 1971. A scheme for the consolidation of holdings in village Vasani was introduced and thereupon the survey no.110/1 was consolidated in block no.153 which also included survey no.110/2 and survey no.110/3 of village Vasani. The Mamlatdar, Palanpur submitted a report dated March 25, 1976 to the Assistant Collector, Palanpur mentioning inter alia that the petitioner and one Ajmalji Dhudaji were cultivating the original survey no.110/1 as mortgagees which amounted to breach of the provisions of section 31 of the Bombay Prevention of Fragmentation Act, 1947 (the Act for short), and therefore appropriate action should be initiated. Accordingly proceedings were initiated by the Assistant Collector, Palanpur, for taking appropriate action in the matter. The Assistant Collector, Palanpur had afforded an opportunity of being heard to the affected parties, but they had not availed of the same. The Assistant Collector, Palanpur, by his order dated May 13, 1976, held that the petitioner and Ajmalji Dhudaji were cultivating the original survey no.110/1 which was part of block No.153 as mortgagees contrary to the provisions of section 31 of the Act. In view of the said finding, the Assistant Collector, Palanpur, by his order dated May 13, 1976, directed summary eviction of the petitioner as contemplated by section 9 of the said Act.

3. Feeling aggrieved by the said order the petitioner invoked the revisional jurisdiction of the Government as provided by section 35 of the said Act. The Government has rejected the revision application filed by the petitioner giving rise to the instant petition.

4. Mr. P.J. Vyas, learned counsel for the petitioner submitted that the points which were raised by the petitioner in the written submissions submitted before the Government have not been considered by the government and therefore the petition should be accepted. It was argued that by sale deed dated August 11, 1971 the

petitioner had purchased survey no.110/1, which was given separate block number i.e. 185 and as the petitioner has purchased block no.185, no sub-division as contemplated by section 31 of the Act has taken place and therefore the direction given by the Assistant Collector, Palanpur for eviction of the petitioner, which is confirmed by the government in revision, deserves to be set aside. Learned counsel for the petitioner emphasized that the impugned orders having been passed without application of mind, the petition should be accepted and the matter should be remanded for reconsideration by the State Government in accordance with law.

5. Mr. H.D. Dave, learned AGP has supported the orders which are impugned in the petition. I have considered the submissions advanced at the bar and the documents forming part of the petition. From the record of the case it is evident that in RTS Proceeding No.1/78 the Deputy Collector, Palanpur, by his order dated May 13, 1979 has held that the sale of survey no.110/1 executed by its original owner in favour of the present petitioner is void. It is an admitted position that the order dated May 13, 1979 is not challenged by the petitioner and he has accepted the same. Once the sale deed is held to be void, the possession of the land in question by the petitioner cannot be regard as that of an owner. It is the case of the petitioner himself that initially he was cultivating the land with one Shri Ajmalji Dhudaji as mortgagees. Therefore, the finding recorded by the Assistant Collector, Palanpur, which is confirmed by the Government in revision to the effect that the petitioner is cultivating the land in the capacity of mortgagee cannot be regarded as illegal or erroneous. No holding or any part thereof can be transferred except in accordance with such conditions as may be prescribed by the competent authority. It is not the case of the petitioner that before effecting the sale deed in his favour, the original owner had obtained any permission from the competent authority. Thus, it is rightly held by the Assistant Collector as confirmed by the State Government that the occupation of the land by the petitioner was unauthorised one within the meaning of section 9 of the Act. Section 9 of the Act inter alia provides that any person unauthorisedly occupying or wrongfully in possession of any land, the transfer or partition of which, either by the act of parties or by the operation of law, is void under the provisions of the Act, may be summarily evicted by the Collector. It may be mentioned that sub-section (1) of section 9 stipulates that the transfer or partition of any land contrary to the provisions of the Act shall be void. Therefore, the

summary eviction of the petitioner from original survey no.110/1 by the Assistant Collector, Palanpur, cannot be held to be illegal. In view of this state of affairs, the Government did not commit any error in rejecting the revision application filed by the petitioner so as to warrant interference of this Court in instant petition which is filed under Article 227 of the Constitution of India. The net result is that there is no substance in the petition and the petition is liable to be dismissed.

6. For the foregoing reasons, the petition fails and is dismissed. Rule is discharged. There shall be no order as to costs.

[J.M. PANCHAL J.]

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